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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NATIONAL FARMERS UNION INSURANCE COMPANIES; and LODGE GRASS SCHOOL DISTRICT NO. 27,
Petitioners,

v.

CROW TRIBE OF INDIANS; LEROY SAGE, a minor; FLORA NOT AFRAID, his guardian; THE TRIBAL COURT OF THE CROW INDIAN RESERVATION; EDDIE ROUNDFACE, GLEN BIRDINGROUND, and IRA LEFT HAND, Judges of the Tribal Court of the Crow Indian Reservation; CROW INDIAN TRIBAL COUNCIL; and DONALD STUART, Chairman of the Crow Indian Tribal Council,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for The Ninth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

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PRELIMINARY STATEMENT

The respondents and the several *amici curiae* urging affirmance of the decision uttered by the Ninth Circuit Court of Appeals have seemingly emphasized that petitioners' case is abstract and not ripe for decision because of the exhaustion issue. When discussing this position, it has been suggested by respondents Sage and Not Afraid that the Tribal Court "is prepared to afford every proper remedy and right due National, if it would appear before that court." (Sage Br. 49). Moreover, Sage has argued all along that he would be precluded from any remedy in the Courts of Montana were Judge Battin's decision ultimately sustained.

Following Justice Rehnquist's initial stay of the Ninth Circuit's Writ of Mandate and the granting of certiorari by this Court, several additional proceedings have taken place before the Federal District Court and the Ninth Circuit Court of Appeals. As those proceedings have become a portion of the record of this case and bear upon respondents' position above articulated, this Supplemental Brief is required. To aid this Court in the examination of the record as it has developed, petitioners have sent additional material which has been included in the records of the Federal District Court and Ninth Circuit Court of Appeal and requested the Clerk to lodge the same with the Court.

What follows is petitioners' attempt to show that this is not an abstract case in which no harm has yet befallen Lodge Grass School District No. 27 and an attempt to show that Sage through his counsel has erased the fiction that Sage was precluded from a State Court remedy in this case.

ARGUMENT

I. Respondents Have Seized School District Property Disrupting the Educational Process and Refuse to Return the Same Despite Being So Ordered by the Federal District Court.

On September 10, 1984, Justice Rehnquist extended his Order of August 23, 1984 which recalled the Ninth Circuit

mandate at issue herein and further stayed its reissuance until the ultimate resolution of the case by this Court.

During the process leading up to the September 10, 1984 Order, respondents had requested that this Court require a bond to be posted as a condition precedent to the continuing vitality of Justice Rehnquist's withdrawal and stay of reissuance of the Ninth Circuit's mandate. Justice Rehnquist, in response to this request, left the issue to be determined by Judge Battin.

On September 12, 1984, respondents Sage and Not Afraid moved Judge Battin to require the bond. (Supp. App."E".) This was two days after Judge James F. Battin reinstated the District Court injunction which ordered Sage and Not Afraid to refrain from executing on the original Crow Tribal Court Judgment. (Supp.App."E".)

On October 9, 1984, petitioners moved the Federal District Court to order a return of the school property seized by Mr. Belue and the Tribal Court even before the original injunction issued by Judge Battin had been rescinded in response to the Ninth Circuit's mandate. (Supp.App."F".) It is noteworthy that the Tribal defendants did not respond to this motion. They did not appear for argument on the motion and made no motion for bond themselves. In the meantime respondents Sage and Not Afraid withdrew their motion for a Federal District Court Order requiring bond. (Supp.App. p. 55, 1.17.)

On December 10, 1984, Judge Battin having read the briefs of Sage, Not Afraid and petitioners and having heard oral argument by their counsel, ruled that respondents "shall cause the school district property seized pursuant to a Crow Tribal Court writ issued on August 1, 1984, to be returned to the School District within (5) days of the date of this order." (Supp.App. Ex."G".) On December 11, 1984,

attorney Belue was made aware of the Order and stated to a newspaper reporter that he did not know what his next step would be, "but I'm not going to take that order without doing something." (Supp.App. Ex."J", p. 28, 1.10.)

Rather than appeal the December 10, 1984 Order to the Ninth Circuit Court of Appeals or to the United States Supreme Court, attorney Belue ignored the federal system and instead went to the Crow Tribal Court on December 18, 1985. (Supp.App. Ex."J", p. 58, 1.24.)

In his deposition, Mr. Belue testified that he visited with Tribal Court Judge Roundface on this date and was told by Judge Roundface:

> Clarence, why are you filing this motion? I was going to—I thought that they would come down here with Judge Battin's order, and I was going to ignore it. (Belue Depo. p. 72, 1.5.)

When petitioners noticed that the School District property had not been returned in obedience to Judge Battin's December 10, 1984 Order, they brought contempt proceedings against respondents to achieve return of the property. This was because the loss of the computers had destroyed what had previously been a nationally leading bilingual language program. (Supp.App. Ex."L", p. 41, 1.13.)

When respondent Tribal members were served with the motion to hold them in contempt, one of their counsel, Barbara Lavender, contacted petitioners' attorneys about settlement of the contempt proceedings relative to the Tribal respondents. Ms. Lavender proposed that she would make known Judge Roundface's position that but for Mr. Belue's Tribal Court motion of December 18, 1985, the Tribal Court had always been willing to return the property without bond. (Supp.App. Ex."I", p. 23, 1.17.) Thus peti-

tioners were induced to withdraw the contempt proceedings against the Tribal defendants. As is made clear in (Supp.App. Ex. "I"), Ms. Lavender although testifying she had full authority to make the foregoing representation, reneged on the deal. Faced with this development, petitioners were forced to request a continuance to properly prepare the contempt proceedings. That hearing was then set for March 7, 1985. Mr. Belue also charged the undersigned as well as two other attorneys with attempting to bribe Judge Roundface by agreeing to withdraw the contempt charges against him. These matters were also set for hearing on March 7, 1985. The transcript of that hearing is set forth as Exhibit "L" in the Supplementary Appendix. What was said therein goes to the core of petitioners' claims that the Crow Tribal Court has exerted unauthorized control over petitioners' property and continues to unlawfully exert jurisdiction over the property despite contrary orders issued by this Court and the Federal District Court.

The March 7, 1985 transcript makes it clear what the source of the problem is. At page 30, line 7, attorney Belue states, "We consider the actions of Judge Battin to be contemptuous. We consider that he has no jurisdiction." This was stated as the position of respondents in reaction to petitioners' claims that Justice Rehnquist, in ordering a withdrawal of the Ninth Circuit mandate and in requesting Judge Battin to address the issue of the seized property, had operated to require a return to the status quo prior to the seizure of the property.

Respondents have taken the position that Judge Battin's Order of December 10, 1985 in response to Justice Rehnquist's opinion of September 10, 1984 is an act of contempt vis' a vis' the Tribal Court's jurisdiction. Respondents also take the position that, "the Supreme Court did not have supervisory jurisdiction over the Crow Tribal Court." (Tribal Court's Memorandum dated April 2, 1985 to Ninth Circuit, p. 17.)

Finally petitioners and indeed the Federal District Court have been informed time and again that respondents will refuse to honor Federal Court activity in this case because as Mr. Belue has stated, respondents believe, "that Judge Battin and his country-club group and these attorneys are in sordid conspiracy, and I believe that, and I think that the evidence is here to support all of that." (Supp. App. Ex. "L", p. 209, 1.20.)

The results of the March 7, 1985 hearing were twofold. Mr. Belue was cited by the Court for contempt and secondly, Judge Hatfield found absolutely no merit to the disciplinary charges brought by Mr. Belue. Mr. Belue was given until March 13, 1985 within which to purge himself of the contempt.

So that this Court will be aware of the posture of this case below, all documents which have been generated in the Federal District Court file and the Ninth Circuit file have been lodged with the Court. The Ninth Circuit has stayed the contempt portion of Judge Hatfield's oral ruling of March 7, 1985 and has also stayed his issuing a written opinion dismissing the ethical charges brought by Mr. Belue.

The obtaining of the stay and other documents filed in connection with the contempt citation illustrate that despite the representations made by the attorneys for Tribal respondents, Judge Roundface has never entertained any thought of obeying Judge Battin's December 10, 1985 Order. He has entered an Order which basically contends that the Tribal Court is at war with the Federal District Court and that as a result thereof, this case may result in bodily harm to persons litigating the issues.

II. Sage Has a State Court Remedy.

Finally, it was discovered that respondents Sage and Not Afraid had filed a tort action involving the identical facts at issue in the Tribal Court judgment in State Court. (Affidavit of March 12, 1985, re: return of property.) When petitioners discovered this, they filed an answer and were prepared at long last to defend Mr. Sage's claims on the merits. At Sage's request, however, the State District Court has dismissed that action over petitioners' objection. Nevertheless, the filing of the action itself indicates that Mr. Sage is not without a forum in State Court despite the consistent protestations to the contrary.

CONCLUSION

Petitioners do not stand before this Court debating abstract issues. The assertion of jurisdiction over a political subdivision of the State of Montana has resulted in the seizure of School District property. The seizure has severely handicapped the District's duty to provide bilinqual education on the Crow Indian Reservation. Given respondents' avowed determination to ignore a valid Federal District Court Order to return the property, petitioner School District exists with the dread that future seizures of property could occur at any moment.

By filing a tort action in State District Court, respondent Sage has admitted that he has the right to have his case heard on the merits therein. Upholding Judge Battin's decision in this case will not deprive Leroy Sage of a right to his day in Court.

Respectfully submitted,

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